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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 772 and 774

[Docket No. 131121983-4407-01]

RIN 0694-AG02

Revisions to the Export Administration Regulations Based on the 2013 Missile Technology Control Regime Plenary Agreements

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to reflect changes to the Missile Technology Control Regime (MTCR) Annex that were agreed to by MTCR member countries at the October 2013 Plenary in Rome, Italy, and at the 2013 Technical Experts Meeting in Bonn, Germany. This final rule revises eight Export Control Classification Numbers (ECCNs), adds one new ECCN and lastly

revises two defined terms (the definition of “payload” and “repeatability”) to implement the changes that were agreed to at the meetings.

DATES: This rule is effective: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

Background

The MTCR is an export control arrangement among 34 nations, including most of the world’s suppliers of advanced missiles and missile-related equipment, materials, software and technology. The regime establishes a common list of controlled items (the Annex) and a common export control policy (the Guidelines) that member countries implement in accordance with their national export controls. The MTCR seeks to limit the risk of proliferation of weapons of mass destruction by controlling exports of goods and technologies that could make a contribution to delivery systems (other than manned aircraft) for such weapons.

In 1992, the MTCR’s original focus on missiles for nuclear weapons delivery was expanded to include the proliferation of missiles for the delivery of all types of weapons of mass destruction (WMD), i.e., nuclear, chemical and biological weapons. Such proliferation has been identified as a threat to international peace and security. One way to counter this threat is to

maintain vigilance over the transfer of missile equipment, material, and related technologies usable for systems capable of delivering WMD. MTCR members voluntarily pledge to adopt the regime's export Guidelines and to restrict the export of items contained in the regime's Annex. The implementation of the regime's Guidelines is effectuated through the national export control laws and policies of the regime members.

Amendments to the Export Administration Regulations

This final rule revises the EAR to reflect changes to the MTCR Annex agreed to at the October 2013 Plenary in Rome, Italy, and at the 2013 Technical Experts Meeting in Bonn, Germany. Corresponding MTCR Annex references are provided below for the MTCR Annex changes agreed to at the meetings. In the explanation below for the revisions made in this rule, BIS identifies these changes as follows: "Rome 2013 Plenary" and "Bonn 2013 TEM" to assist the public in understanding the origin of each change included in this final rule.

In section 772.1 (Definitions of Terms as Used in the Export Administration Regulations) this final rule amends the definition of the term "payload" (MTCR Annex Change, Definitions: "Payload," Bonn 2013 TEM). The definition of "payload" is revised by adding the phrase "and separation systems" to the end of the description for space launch vehicles in Technical Note (b.2). This control changes the definition of "payload" for space launch vehicles to specifically identify separation systems. This is a clarification and will not change any scope of control. This change is not expected to have any impact on the number of license applications received by BIS.

In addition, in section 772.1, this final rule amends the definition of the term "repeatability" (MTCR Annex Change, Category II: Item 9.A.3., Rome 2013 Plenary). This

final rule adds the phrase “for Inertial Sensor Terminology” after the phrase “IEEE Standard” to add more description regarding the standard being referenced. In addition, after the standard number 528-2001, this final rule adds the phrase “in the Definitions section paragraph 2.214 titled repeatability (gyro, accelerometer).” These changes are not substantive and are limited to assisting the public in more easily identifying the standards being referenced in the “repeatability” definition. This change is not expected to have any impact on the number of license applications received by BIS.

In addition, this rule amends the Commerce Control List (CCL) to reflect changes to the MTCR Annex. Specifically, the following nine ECCNs are affected:

ECCN 1B102 is amended by revising “items” paragraph (a) in the List of Items Controlled section by correcting a typographical error in the phrase “metal power” to make it read “metal powder.” This final rule also revises paragraph (a) by adding the term “spheroidal” to clarify that those types of materials are also within the scope of this paragraph. Lastly, this final rule revises the cross reference to the United States Munitions List (USML) to make the cross reference more specific and to conform to recent changes to the manner in which items controlled for MT reasons are identified on the USML (MTCR Annex Change, Category II: Item 4.B.3.d., Bonn 2013 TEM). This change is a follow-up conforming change to the CCL to reflect the previous inclusion of the term “spheroidal” in ECCNs 1C011 and 1C111 in the 2012 MTCR Plenary Agreements rule published on July 16, 2013 (78 FR 42430), which made it clear that metal powders are not perfectly spherical. This change is not expected to have any impact on the number of license applications received by BIS.

ECCN 1B117 is amended by revising “items” paragraph (b) in the List of Items Controlled section to add single quotes around the term ‘mixing/kneading shaft.’ In addition, this final rule adds a new Note to paragraph (b) to specify that the term ‘mixing/kneading shaft’ does not refer to deagglomerators or knife-spindles to clarify the scope of this term as used in this paragraph (MTCR Annex Change, Category II: Item 4.B.3., Bonn 2013 TEM). This change clarifies what constitutes a mixing/kneading shaft in a batch mixer. This change is not expected to have any impact on the number of license applications received by BIS.

ECCN 1D001 is amended by revising the MT control(s) paragraph in the License Requirements section to remove the term “use” and replace it with the terms “operation” and “maintenance,” which are two of six elements from the defined term “use” (MTCR Annex Change, Category II: Item 6.D.1., Rome 2013 Plenary). This change is made as a result of the U.S. Government’s efforts to replace the defined term “use” within the Annex with more specific language (such as “operation” and “maintenance” or other terms) in certain entries to better identify the items warranting control. Although this changes the scope of the MT control in this ECCN, this change is only expected to result in an increase of 3-5 applications received annually by BIS.

ECCN 1D018 is amended by revising the MT control(s) paragraph in the License Requirements section to remove the term “use” and replace it with the terms “operation” and “maintenance,” which are two of six elements from the defined term “use” (MTCR Annex Change, Category II: Item 4.D.1., Rome 2013 Plenary). This is the result of the U.S. Government’s efforts to replace the defined term “use” within the Annex with more specific language (such as “operation” and “maintenance” or other terms) in certain entries to better identify the items warranting control. Although this change clarifies the scope of the MT control

in this ECCN, this change is expected to result in an increase of 1-2 applications received annually by BIS.

ECCN 1D101 is amended by revising the heading to remove the term “use” and replace it with the terms “operation” and “maintenance,” which are two of six elements from the defined term “use” (MTCR Annex Change, Category II: Item 4.D.1., Rome 2013 Plenary). This is the result of the U.S. Government’s efforts to replace the defined term “use” within the Annex with more specific language (such as “operation” and “maintenance” or other terms) in certain entries to better identify the items warranting control. Although this change clarifies the scope of the ECCN heading, this change is expected to result in an increase of 3-5 applications received annually by BIS.

ECCN 6A107 is amended by revising the heading and the “items” paragraph in the List of Items Controlled section to make clearer how gravity meters and gravity gradiometers are controlled under this ECCN (MTCR Annex Change, Category II: Item 12.A.3., Bonn 2013 TEM). Previously, both gravity meters and gravity gradiometers were specified by the same parameters, when in fact gravity meters and gradiometers measure different values and these results are expressed in different units. A gravity meter measures local gravitational forces directly, and is expressed in milligals. A gradiometer measures the rate of change of gravitational acceleration, or gravity gradient. Gradiometers have more complex units, and as any gradiometer that is designed or modified for airborne or marine use can be used in missiles, the text covers all gradiometers, regardless of performance values. This change is a correction. Although this change clarifies the scope of the ECCN, this change is not expected to have any impact on the number of license applications received by BIS.

ECCN 9A101 is amended by revising “items” paragraph (a.2) to add the phrase “conditions using the ICAO standard atmosphere” to provide greater specificity for how specific fuel consumption should be measured for purposes of this paragraph when at static sea level (MTCR Annex Change, Category II: Item 3.A.1.a.2., Bonn 2013 TEM). This is a clarification of what standard conditions are to be applied during measurement. This change is not expected to have any impact on the number of license applications received by BIS.

ECCN 9A102 is added to the EAR. This new ECCN 9A102 will control ‘turboprop engine systems’ “specially designed” for items controlled in 9A012 for MT reasons, and “specially designed” “parts” and “components” therefor, having a maximum power greater than 10 kW achieved uninstalled at sea level static conditions using the ICAO standard atmosphere. New ECCN 9A102 also includes a technical note to clarify what “components” a ‘turboprop engine system’ incorporates (MTCR Annex Change, Category II: Item 3.A.9., Bonn 2013 TEM). Annex entry 3.A.9. was revised at the Bonn 2013 TEM. At that time the U.S. Government, in reviewing the new change, determined that the existing CCL entries did not control for MT reasons the commodities identified in Annex Item 3.A.9. Therefore, BIS needed to create a new ECCN 9A102 to control the commodities identified in Annex Item 3.A.9. This change is expected to result in an increase of 1-2 applications received annually by BIS.

ECCN 9B106 is amended by revising “items” paragraph a.2 in the List of Items Controlled section to add the term “while” for clarification (MTCR Annex Change, Category II: Item 15.B.4.a.2., Bonn 2013 Plenary). This is a minor correction to the wording used in paragraph (a.2). This change is not expected to have any impact on the number of license applications received by BIS.

Savings Clause

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting or reexporting carrier, or en route aboard a carrier to a port of export or reexport, on [INSERT DATE OF PUBLICATION], pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR) so long as they are exported or reexported before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION]. Any such items not actually exported or reexported before midnight, on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION], require a license in accordance with this rule.

Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 8, 2013, 78, 2013, 78 FR 49107(August 12, 2013), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

Regulatory Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be significant for purposes of Executive Order 12866.
2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and carries a burden estimate of 43.8 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number 0694–0088 are expected to increase slightly as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by e-mail to Jasmeet_K._Seehra@omb.eop.gov, or by fax to (202) 395-7285.
3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Immediate implementation of these amendments fulfills the United States' international commitments to the MTCR. The MTCR contributes to international peace and security by promoting greater responsibility in transfers of missile technology items that could make a contribution to delivery systems (other than manned aircraft) for weapons of mass destruction. The MTCR consists of 34 member countries that act on a consensus basis and the changes set forth in this rule implement agreements reached by MTCR member countries at the October 2013 Plenary in Rome, Italy. Since the United States is a significant exporter of the items in this rule, implementation of this provision is necessary for the MTCR to achieve its purpose. Moreover, it is in the public's interest to waive the notice and comment requirements, as any delay in implementing this rule will disrupt the movement of affected items globally because of disharmony between export control measures implemented by MTCR members, resulting in tension between member countries. Export controls work best when all countries implement the same export controls in a timely manner. If this rulemaking were delayed to allow for notice and comment and a 30 day delay in effectiveness, it would prevent the United States from fulfilling its commitment to the MTCR in a timely manner, would injure the credibility of the United States in this and other multilateral regimes, and may impair the international communities' ability to effectively control the export of certain potentially national- and international-security-threatening materials.

Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form.

List of Subjects

15 CFR Part 772

Exports.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 772 and 774 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 772—[AMENDED]

1. The authority citation for 15 CFR part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013).

2. Section 772.1 is amended:

a. By revising Technical Notes b.2 of the “payload” definition; and

b. By adding, in alphabetical order, a second definition of “repeatability” as set forth

below:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

Payload. ***

NOTE: ***

TECHNICAL NOTES:

a. ***

b. Space Launch Vehicles - “Payload” includes:

1. ***

2. Spacecraft-to-launch vehicle adapters including, if applicable, apogee/perigee kick motors or similar maneuvering systems and separation systems;

“Repeatability”. (MTCR Context only) (Cat 7) – According to IEEE Standard for Inertial Sensor Terminology 528-2001 in the Definitions section paragraph 2.214 titled repeatability (gyro, accelerometer) as follows: “The closeness of agreement among repeated measurements of the

same variable under the same operating conditions when changes in conditions or non-operating periods occur between measurements.”

PART 774—[AMENDED]

3. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013).

4. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1 – Special Materials and Related Equipment, Chemicals, “Microorganisms” and “Toxins,” Export Control Classification Number (ECCN) 1B102 is amended by revising “items” paragraph a in the List of Items Controlled section to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

1B102 Metal powder “production equipment,” other than that specified in 1B002, and “parts” and “components” as follows (see List of Items Controlled).

List of Items Controlled

Items:

a. Metal powder “production equipment” usable for the “production”, in a controlled environment, of spherical, spheroidal or atomized materials specified in 1C011.a., 1C011.b., 1C111.a.1., 1C111.a.2., or controlled for MT reasons in Category V of the USML.

5. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1 – Special Materials and Related Equipment, Chemicals, “Microorganisms” and “Toxins,” Export Control Classification Number (ECCN) 1B117 is amended:

a. By revising “items” paragraph b in the List of Items Controlled section; and

b. By adding a note to “items” paragraph b in the List of Items Controlled section to read as follows:

1B117 Batch mixers with provision for mixing under vacuum in the range from zero to 13.326 kPa and with temperature control capability of the mixing chamber and having all of the following characteristics (see List of Items Controlled), and “specially designed” “parts” and “components” therefor.

List of Items Controlled

Items:

b. At least one ‘mixing/kneading shaft’ mounted off center.

Note to paragraph b: In 1B117.b. the term ‘mixing/kneading shaft’ does not refer to deagglomerators or knife-spindles.

6. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1 – Special Materials and Related Equipment, Chemicals, “Microorganisms” and “Toxins,” Export Control Classification Number (ECCN) 1D001 is amended by revising the second entry in the License Requirements table to read as follows:

1D001 “Software” “specially designed” or modified for the “development”, “production” or “use” of equipment controlled by 1B001 to 1B003.

License Requirements

*Reason for Control: ****

Control(s)	Country Chart (see Supp. No. 1 to part 738).

MT applies to “software” for the “development,” “production,” operation, or maintenance of items controlled by 1B001 for MT reasons.	MT Column 1

7. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1 – Special Materials and Related Equipment, Chemicals, “Microorganisms” and “Toxins,” Export Control Classification Number (ECCN) 1D018 is amended by revising the second entry in the License Requirements table to read as follows:

1D018 “Software” “specially designed” or modified for the “development”, “production”, or “use” of items controlled by 1B018.

License Requirements

Reason for Control: ***

Control(s)	Country Chart (see Supp. No. 1 to part 738).

MT applies to “software” for the “development”, “production”, operation, or maintenance of items controlled by 1B018 for MT reasons.	MT Column 1

8. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1 – Special Materials and Related Equipment, Chemicals, “Microorganisms” and “Toxins,” Export Control Classification Number (ECCN) 1D101 is amended by revising the heading to read as follows:

1D101 “Software” “specially designed” or modified for the operation or maintenance of commodities controlled by 1B101, 1B102, 1B115, 1B117, 1B118, or 1B119.

9. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6A107 is amended:

a. By revising the heading; and

b. By revising the “items” paragraph in the List of Items Controlled section to read as follows:

6A107 Gravity meters (gravimeters) or gravity gradiometers, other than those controlled by 6A007, designed or modified for airborne or marine use, as follows, (see List of Items Controlled) and “specially designed” “parts” and “components” therefor.

List of Items Controlled

Items:

a. Gravity meters having all the following:

1. A static or operational accuracy equal to or less (better) than 0.7 milligal (mgal); and
2. A time to steady-state registration of two minutes or less.

b. Gravity gradiometers.

10. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9A101 is amended by revising “items” paragraph a.2 in the List of Items Controlled section to read as follows:

9A101 Turbojet and turbofan engines, other than those controlled by 9A001, as follows (see List of Items Controlled).

List of Items Controlled

Items:

a. ***

a.2. Specific fuel consumption of $0.15 \text{ kg N}^{-1} \text{ h}^{-1}$ or less (at maximum continuous power at sea level static conditions using the ICAO standard atmosphere); *or*

11. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—
Aerospace and Propulsion add new ECCN 9A102 between ECCNs 9A101 and 9A103 to read as follows:

9A102 ‘Turboprop engine systems’ “specially designed” for items controlled in 9A012 for MT reasons, and “specially designed” “parts” and “components” therefor, having a maximum power greater than 10 kW (achieved uninstalled at sea level static conditions using the ICAO standard atmosphere), excluding civil certified engines.

License Requirements

Reason for Control: MT, AT

Control(s)	Country Chart (see Supp. No. 1 to part 738).
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MT applies to entire entry	MT Column 1
AT applies to entire entry	AT Column 1

List Based License Exceptions (See Part 740 for a description of all license exceptions)

LVS: N/A

GBS: N/A

CIV: N/A

List of Items Controlled

Related Controls: (1) See also 9A001 and 9A101.

Related Definitions: N/A

Items:

The list of items controlled is contained in the ECCN heading.

Technical Note to 9A102: *For the purposes of 9A102 a ‘turboprop engine system’ incorporates all of the following:*

- a. *Turboshaft engine; and*
- b. *Power transmission system to transfer the power to a propeller.*

12. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Aerospace and Propulsion, Export Control Classification Number (ECCN) 9B106 is amended by revising “items” paragraph a.2 in the List of Items Controlled section to read as follows:

9B106 Environmental chambers usable for rockets, missiles, or unmanned aerial vehicles capable of achieving a “range” equal to or greater than 300 km and their subsystems, as follows (see List of Items Controlled).

List of Items Controlled

Items:

a. ***

a.2. Incorporating, or designed or modified to incorporate, a shaker unit or other vibration test equipment to produce vibration environments equal to or greater than 10 g rms, measured ‘bare table’, between 20 Hz and 2 kHz while imparting forces equal to or greater than 5 kN;

Technical Notes: ***

Dated: May 21, 2014.

Kevin J. Wolf

Assistant Secretary for Export Administration

